

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 97642 / June 2, 2023

Admin. Proc. File No. 3-16151

In the Matter of  
  
STEPHEN STUART

ORDER DENYING REQUEST TO VACATE COLLATERAL BARS

On January 26, 2015, the Commission issued an order (the “2015 Order”) settling proceedings against Stephen Stuart and finding that Stuart had willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder by engaging in a fraudulent kickback scheme involving the purchase and sale of publicly traded penny stock.<sup>1</sup> As part of the settlement, Stuart agreed to be barred from participating in any offering of a penny stock, with the right to apply for reentry after five years. Stuart also agreed to a cease-and-desist order.

In 2017, in *Bartko v. SEC*, the United States Court of Appeals for the District of Columbia Circuit held that it was “impermissibly retroactive” to impose a collateral bar based on conduct that pre-dated the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act.<sup>2</sup> As a result of that decision, the Commission announced a program allowing persons subject to collateral bars to request that the Commission exercise its discretion to vacate certain of those bars. In doing so, the Commission emphasized that “[t]his process applies *only* to collateral bars, which are bars that prohibit you from associating in a capacity in the securities industry with which you were not associated or were not attempting to associate at the time of your securities law violations.”<sup>3</sup>

In July 2017, Stuart applied for relief under that program by submitting a Commission-provided form, which specified that it was for relief “to vacate collateral bars (i.e., bars from industries with which the individual was not associated or not seeking to associate at the time of his or her securities law violation) that were imposed against individuals based entirely on conduct that occurred before the effective date of the Dodd-Frank Wall Street Reform and

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<sup>1</sup> See *Stephen Stuart*, Exchange Act Release No. 74137, 2015 WL 327676, at \*1 (Jan. 26, 2015).

<sup>2</sup> 845 F.3d 1217, 1225 (D.C. Cir. 2017).

<sup>3</sup> <https://www.sec.gov/news/statement/commission-statement-regarding-bartko-v-sec> (emphasis added).

Consumer Protection Act (July 22, 2010).”

On April 5, 2022, the Commission issued a Statement Relating to Certain Administrative Adjudications (the “April 5 Statement”) describing a control deficiency related to the separation of enforcement and adjudicatory functions within our system for administrative adjudications.<sup>4</sup> The April 5 Statement explained that the Chair of the Commission had initiated a comprehensive internal review to assess the scope and potential impact of the control deficiency, which review was conducted by experienced investigative staff from the Division of Examinations under the supervision of the Commission’s General Counsel. The April 5 Statement further disclosed the review team’s findings regarding *SEC v. Cochran*<sup>5</sup> and *SEC v. Jarkesy*.<sup>6</sup> As part of the April 5 Statement, the Commission further committed to the release of information about additional affected matters.

On June 2, 2023, we released a Second Commission Statement Relating to Certain Administrative Adjudications (the “June 2 Statement”) regarding *Cochran* and *Jarkesy*, as well as findings about additional adjudicatory matters currently pending before the Commission affected by the control deficiency identified in the April 5 Statement.<sup>7</sup> Those included 61 matters—including 46 pending petitions for relief under the Commission’s *Bartko* program—in which Division of Enforcement administrative staff accessed memoranda drafted by our Office of the General Counsel’s Adjudication Group that described procedural actions that Adjudication staff recommended that the Commission take in many (or all) pending adjudicatory proceedings (“Omnibus Memoranda”). *Stuart* was one of those matters.

As detailed in the June 2 Statement, the review team found that, of the eight Omnibus Memoranda accessed by administrative staff, only one was uploaded to Enforcement’s case management database. The review team also found no evidence that the administrative staff member who accessed the Omnibus Memoranda contacted any Enforcement staff responsible for investigating and prosecuting the relevant matters about any of these memoranda.

Although the review team’s investigation uncovered no evidence that the control deficiency resulted in harm to any respondent or affected the Commission’s adjudication in any proceeding, we nevertheless determined to grant, as a matter of discretion, petitions to vacate certain collateral bars identified in the June 2 Statement that remained pending before the

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<sup>4</sup> <https://www.sec.gov/news/statement/commission-statement-relating-certain-administrative-adjudications>.

<sup>5</sup> Admin. Proc. File No. 3-17228; *see also Axon Enters., Inc. v. FTC*, 598 U.S. \_\_\_\_, 143 S. Ct. 890 (2023).

<sup>6</sup> Admin. Proc. File No. 3-15255; *see also Jarkesy v. SEC*, 34 F.4th 446 (5th Cir. 2022), *pet. for rev. filed* (Mar. 8, 2023).

<sup>7</sup> <https://www.sec.gov/news/statement/second-commission-statement-relating-certain-administrative-adjudications>.

Commission.<sup>8</sup> We found that doing so was appropriate to preserve the Commission's resources.<sup>9</sup> Here, however, Stuart's 2015 Order did not impose a collateral bar. It imposed only one bar: a primary bar from participating in any offering of a penny stock, which was imposed because of Stuart's involvement in a fraudulent scheme involving penny stock. Stuart is thus either asking us to set aside a collateral bar that does not exist, or he is seeking relief from a primary bar. Either way, the relief he seeks is outside the scope of the *Bartko* program.

Accordingly, IT IS ORDERED that Stephen Stuart's request to vacate collateral bars is DENIED as moot.

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>8</sup> Order Vacating Certain Associational Bars, *In re Pending Administrative Proceedings* (June 2, 2023), <https://www.sec.gov/litigation/opinions.htm>.

<sup>9</sup> *Id.*